

REMARKS

This paper is in response to the Final Office Action of July 3, 2006. Applicants have amended claims 1, 3, 11-15, 17, 25, 26, 29-33, 35, 37, and 38. Claims 4, 18, and 27 are cancelled. The amended claims contain no new matter and are fully supported by the specification. Accordingly, the Applicants respectfully submit that pending claims 1-3, 5-17, 19-26, and 28-38 are now in condition for allowance in light of the amendments and remarks below.

Statement of Substance of Interview

This response has been prepared in view of the telephone conference with the Examiner on August 24, 2006 about the merits of the prior art references asserted against the Applicant's claims. In that conference, the Examiner preliminarily indicated that the claims, as amended herein, would be sufficient to traverse the teachings of the prior art asserted. However, the Examiner indicated that any decision to allow the amended claims would be in lieu of a further prior art search and a review of the specification to ensure that no new matter was introduced in the amended claims.

Constructive Restriction Requirement

The Examiner constructively withdrew claims 33-36 as being directed towards a non-elected invention. In view of the amendments and arguments contained herein, the Applicant respectfully requests reconsideration of this constructive restriction of claims 33-36 under 37 C.F.R. 1.143 (See MPEP 821.03). Applicant provisionally elects Group I comprising claims 1-32, 37, and 38.

Contrary to the Examiners assertion, Group I (claims 1-32, 37, and 38) and Group II (claims 33-36) are not subcombinations that are usable together in a single combination. They are simply two differently claimed variations of the same process for providing a centralized polling environment (i.e., same combination). Group I and Group II claims cannot be logically combined to form a single combination as they share many of the same limitations. Therefore, the applicants respectfully submit that MPEP 806.05(d) is the improper standard to apply to the Applicant's claims for restriction requirement determination purposes.

The Group I and Group II claims are more properly analyzed, for restriction purposes, under MPEP 806.05(j), which outlines the Examiner's burden to support a requirement for restriction between two or more related process inventions by requiring the Examiner to show "both two-way distinctiveness and reasons for insisting on restriction are necessary." Under MPEP 806.05(j), inventions are distinct if "(A) the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; (B) the inventions as claimed are not obvious variants; and (C) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect." It is clear that the Group I and Group II claims do overlap in scope as they both claim archiving polls "in a storage area", selecting polls for placement in a webpage, delivering the polls to a user to permit viewing, and updating the profile of the user based on the interaction. For the same reasons, Group I claims and Group II claims cannot be viewed as mutually exclusive claims. Additionally, it is clear that the Group I claims and Group II claims, in particular claims 1 and 33, are obvious variants of one another as they both claim the same basic invention with differing levels of detail.

Furthermore, under MPEP 806.05(c), the PTO stated the reasons for insisting on restriction are ">there would be a serious search burden as evidenced by<separate classification,

status, or field of search”. None of those factors come into play here with the Group I and Group II claims as they do not warrant separate classification, status, or field of search during the course of examination. For at least the reasons discussed above, the Applicant respectfully requests that claims 33-36 be reinstated for consideration.

Should the Examiner insist upon maintaining this constructive restriction requirement, the Applicants elect claims 1-32, 37, and 38. However, the Applicants respectfully reserve the right to pursue the non-elected claims 33-36 in a later continuation.

Claim Rejections Under §112

The Examiner rejected claims 30 and 32 for failing to particularly point out and distinctly claiming the subject matter. The Applicant respectfully requests that this rejection be withdrawn as amended claims 30 and 32 no longer includes the recitation that the step of archiving includes the steps of “indexing or rating”.

Claim Rejections Under § 103:

The Examiner rejected claims 1-32, 37, and 38 under 35 U.S.C. § 103(a) as being unpatentable over Boe et al. (Patent No. 6,236,975) in view of Desai et al. (Patent No. 6,618,746). In light of the amendments and arguments contained herein, the Applicant respectfully requests that this rejection be withdrawn.

Claims 1-14

In contrast to independent claim 1, as amended herein, Boe et al. fails to teach or suggest “assigning an audience rating to said polls; archiving said polls in a storage area based on said

audience rating; determining an audience rating level of an affiliated website; searching said archived polls to provide a selected set of said polls, wherein said searching further comprises selecting polls that are more relevant to a user based on that user's responses to previous polls and that do not exceed said audience rating level of said affiliated website" (See Applicant's Claims). Specifically, Boe et al. is completely silent as to the assignment of an "audience rating" to the polls, assignment of an "audience rating level" to the affiliated websites on whose web pages the polls are placed into, and the selection of polls for placement into a web page that do not exceed the audience rating level of the affiliated website that hosts the web page. Desai et al. fails to cure the deficiencies of Boe et al., as Desai et al. is also completely silent as to those features.

Furthermore, in contrast to claim 3 as amended herein, Boe et al. fails to teach or suggest that the archiving step comprises "seeking and obtaining approval to archive based on said audience rating of each of said polls." Desai et al. fails to cure the deficiencies of Boe et al., as Desai et al. is completely silent as to the features of assigning an "audience rating" to the polls and "the seeking and obtaining of approval to archive" based on the audience rating of the poll. Accordingly, the Applicant respectfully requests that this rejection be withdrawn for claim 3.

The audience rating of the polls and the audience rating level of the affiliated website serve to restrict the polls that are selected and placed into the web pages of the affiliated website to only polls having an audience rating "that do not exceed said audience rating level of said affiliated website" (See Applicant's Claims). The inclusion of these limitations provides a check to prevent polls containing more adult material from being placed into the web pages of websites whose viewers are mainly children.

For at least the above reasons, the Applicant respectfully asserts that the rejection as to claims 1 and 3 be withdrawn. Claims 2, 3, and 5-14 depend directly or indirectly off of independent claim 1. Accordingly, the Applicant respectfully requests that this rejection be withdrawn for claims 1-3, and 5-14 as they are now in condition for allowance.

Claims 15-28 and 31-32

In contrast to independent claims 15 and 31, as amended herein, Boe et al. fails to teach or suggest a “website having an audience rating level” and an “administrator processor executing instructions to provide the functions of: creating new polls; assigning an audience rating to said new polls; archiving said new polls in said first database on said audience rating; determining an audience rating level of said website; searching said archived polls based on predefined search criteria to provide a selected set of said polls, wherein said searching further comprises selecting polls that are more relevant to a user based on that user’s responses to previous polls and that do not exceed said audience rating level of said website” (See Applicant’s Claims). Specifically, Boe et al. is completely silent as to a web server hosting a website having an audience rating level and an administrative processor that assigns an audience rating to new polls, archives the new polls based on their audience rating, determines the audience rating level of the website that it is sending polls to, and selects polls to place into the a web page of the website that do not exceed the audience rating level of the website. Desai et al. fails to cure the deficiencies of Boe et al. as Desai et al. is also completely silent as to those features. Additionally, claim 17 as amended is in condition for allowance for the same reasons as those discussed above for claim 3.

For at least the above reasons, the Applicant respectfully asserts that the rejection as to claims 15, 17, and 31 be withdrawn. Claims 16, 17, 19-26, and 28 depend directly or indirectly off of independent claim 15. Claim 32 depends directly off of claim 31. Accordingly, the

Applicant respectfully requests that this rejection be withdrawn for claims 15-17, 19-26, 28, and 31-32 as they are now in condition for allowance.

Claims 29-30

In contrast to independent claim 29, as amended herein, Boe et al. fails to teach or suggest “assigning an audience rating to said polls” and “archiving said polls in a storage area, wherein said archiving step further comprises seeking and obtaining approval to archive based on an audience rating of each of said polls” (See Applicant’s Claims). As discussed previously, both Boe et al. and Desai et al. are completely silent as to the assignment of an audience rating to polls and “the seeking and obtaining of approval to archive” based on the audience rating of the poll. Accordingly, the applicants request that this rejection be withdrawn for independent claim 29 and claim 30 which depends off of claim 29.

Claims 33-38

In contrast with claim 33, as amended herein, Boe et al. fails to teach or suggest “assigning an audience rating to said first poll” and “selecting said first poll from a plurality of archived polls for placement in a first web page corresponding to a first affiliate, based on, the identity of the said first affiliate, the identity of a first user requesting said first web page, and whether said audience rating of said first poll exceeds said audience rating level of said first affiliate” (See Applicant’s Claims). Specifically, Boe et al. is completely silent as to the assignment of an audience rating to a poll and the selection of polls for placement into a web page that do not exceed the audience rating level of the affiliated website (i.e., first affiliate) that hosts the web page. Desai et al. fails to cure the deficiencies of Boe et al. as Desai et al. is also completely silent as to those features.

For at least the above reasons, the Applicant respectfully requests that the rejection as to claims 33 be withdrawn. Claims 34-38 depend directly or indirectly off of independent claim 33. Accordingly, the Applicant respectfully requests that this rejection be withdrawn for claims 33-38 as they are now in condition for allowance

CONCLUSION

Applicant believes that given the above amendments and remarks, the claims are now in condition for allowance and such is respectfully requested.

The Commissioner is hereby authorized to charge the fees for the Extension of Time and Request for Continued Examination and any additional fees or credit any over payments due with this response to deposit account 13-0480 referencing attorney docket number 67175120-001100.

Respectfully submitted,

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